

Dave Franks Illustration

TERMS & CONDITIONS

OWNERSHIP OF COPYRIGHT / COPYRIGHT LICENCE

1. The copyright in artwork commissioned by the Client shall be retained by the Illustrator.
2. The Client or the Client's customer (where the Client is acting as an intermediary) is granted a licence to reproduce the artwork solely for the purposes set out on the face of this acceptance of commission. If the acceptance of commission is silent, the Client or the Client's customer is granted an exclusive licence for one time use in the United Kingdom only.
3. During the currency of the licence the Illustrator shall notify the Client of any proposed exploitation of the artwork for purposes other than self-promotion and the Client shall have the right to make reasonable objections if such exploitation is likely to be detrimental to the business of the Client or the Client's customer.
4. Where use of the artwork is restricted, the Illustrator will normally grant the Client or the Client's customer a licence for use for other purposes subject to payment of a further fee in line with current licensing rates to be mutually agreed between the Illustrator and Client.
5. The licence hereby granted to use the artwork is contingent upon the Illustrator having received payment in full of all monies due to her/him and no reproduction or publication rights are granted unless and until all sums due under this Agreement have been paid.
6. The licence hereby granted is personal to the Client or the Client's customer (where the Client is acting as an intermediary) and the rights may not be assigned or sub-licensed to third parties without the Illustrator's consent.

PAYMENT

7. The Client shall pay all invoices within 30 days of their receipt. Interest at a rate of 2% per month is payable on any balance unpaid after 30 days of the date of invoice.

CANCELLATION

8. If a commission is cancelled by the Client, the Client shall pay a cancellation fee as follows:
 - (i) 25% of the agreed fee if the commission is cancelled before delivery of roughs;
 - (ii) 33% of the agreed fee if the commission is cancelled at the rough stage;
 - (iii) 100% of the agreed fee if the commission is cancelled on the delivery of artwork;
 - (iv) pro rata if the commission is cancelled at an intermediate stage.
9. In the event of cancellation, ownership of all rights granted under this Agreement shall revert to the Illustrator unless the artwork is based on the Client's visual or otherwise agreed.

DELIVERY

10. The Illustrator shall use her/his best endeavours to deliver the artwork to the Client by the agreed date and shall notify the Client of any anticipated delay at the first opportunity in which case the Client may (unless the delay is the fault of the Client) make time of the essence and cancel the commission without payment in the event of the Illustrator failing to meet the agreed date.
11. THE ILLUSTRATOR SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL LOSS OR DAMAGES ARISING FROM LATE DELIVERY OF THE ARTWORK.
12. The Client shall make an immediate objection upon delivery if the artwork is not in accordance with the brief. If such objection is not received by the Illustrator within 21 days of delivery of artwork it shall be conclusively presumed that the artwork is acceptable.

APPROVAL/REJECTION

13. Should the artwork fail to satisfy, the Client may reject the artwork upon payment of a rejection fee as follows:
 - (i) 25% of the agreed fee if the artwork is rejected at the rough stage;

(ii) 50% of the agreed fee if the artwork is rejected on delivery.

14. In the event of rejection, ownership of all rights granted under this Agreement shall revert to the Illustrator unless the artwork is based on the Client's visual or otherwise agreed.

CHANGES

15. If the Client changes the brief and requires subsequent changes, additions or variations, the Illustrator may require additional consideration for such work. The Illustrator may refuse to carry out changes, additions or variations which substantially change the nature of the commission.

WARRANTIES

16. Except where artwork is based on reference material or visuals supplied by the Client or where otherwise agreed, the Illustrator warrants that the artwork is original and does not infringe any existing copyright and further warrants that she/he has not used the artwork elsewhere.
17. The Client warrants that any necessary permissions have been obtained for the agreed use of reference material or visuals supplied by the Client or its customer and shall indemnify the Illustrator against any and all claims and expenses including reasonable legal fees arising from the Illustrator's use of any materials provided by the Client or its customer.

OWNERSHIP OF ARTWORK

18. The Illustrator shall retain ownership of all artwork (including roughs and other materials) delivered to the Client.
19. The Illustrator's original artwork shall not be intentionally destroyed, damaged, altered, retouched, modified or changed in any way whatsoever without the written consent of the Illustrator.
20. The Client shall return all artwork to the Illustrator not later than 6 months after delivery in undamaged, unaltered and unretouched condition although the Client may make and retain transparencies to enable it to exploit the rights granted with the artwork.
21. If the artwork is lost or damaged at any time whilst in the Client's custody (which shall mean any time between delivery of artwork to the Client and its safe return to the Illustrator) the Client shall pay compensation to the Illustrator for the loss/damage of the artwork at a rate to be agreed or, in default of agreement, decided by the Ethics Committee of the Association of Illustrators.
22. THE CLIENT SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL LOSS OR DAMAGES ARISING FROM LOSS OR DAMAGE TO THE ARTWORK.

CREDITS/MORAL RIGHTS

23. The Client shall ensure the Illustrator is credited in any editorial use of the artwork. Credits for non-editorial use are not required unless so indicated on the front of the form.
24. The Illustrator hereby waives the right to injunctive relief for breaches of the right of integrity and the right of paternity.

SAMPLES

25. Unless otherwise agreed, the Illustrator shall be entitled to receive not less than four proofs or printed copies of the work.

NOTICES

26. All notices shall be sent to the Illustrator and to the Client at the address stated in this Agreement. Each party shall give written notification of any change of address to the other party prior to the date of such change.

GOVERNING LAW

27. These terms and conditions are governed by the law of England and Wales and may not be varied except by agreement in writing. The parties hereto submit to the non-exclusive jurisdiction of the English Courts.